

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM )  
MOTORS, INC., and MATTINGLY AUTO )  
SALES, INC., individually and on behalf of )  
other members of the general public similarly )  
situated, )  
Plaintiffs, )  
v. )  
COX AUTOMOTIVE, INC., NEXTGEAR )  
CAPITAL, INC. F/K/A DEALER SERVICES )  
CORPORATION, successor by merger with )  
Manheim Automotive Financial Services, Inc., )  
and JOHN WICK, )  
Defendants. )

Case No. 1:14-cv-01589-TWP-DML

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO PROCEED WITH  
CLASS NOTICE AND PROPOSED PROCEDURES**

It remains Defendants' position that their pending motions—including Defendants' Motion for Summary Judgment [Doc. 192], Defendants' Motion to Reconsider and/or Modify Class Certification Order [Doc. 228], Defendants' Motion to Modify Class Certification Order to Narrow Class [Doc. 237], and Defendants' Objections to Magistrate Judge's Orders on Motions to Stay and Request to Stay Discovery Regarding Subset of Class [Doc. 240]—can and should be decided before notice is sent to any members of the class. The Court's decisions on those motions may eliminate the need for any notice or may change the scope of the notice and any required follow-up notices.

If the Court nevertheless intends to proceed with class notice at this time, Defendants do not object to the specific notice procedures proposed by Plaintiffs. [See Doc. 249.] (Defendants

do not agree with or endorse the background assertions made in Plaintiffs' motion.) Defendants respectfully suggest that class members be given 30 days to opt out of the class following notice.

Respectfully submitted, this 6th day of October, 2017.

*s/ Tracey K. Ledbetter*

---

Jason S. McCarter (*pro hac vice*)  
Tracey K. Ledbetter (*pro hac vice*)  
EVERSHELD SUTHERLAND (US) LLP  
999 Peachtree Street, NE, Suite 2300  
Atlanta, GA 30309-3996  
(404) 853-8000  
(404) 853-8806 fax  
jasonmccarter@eversheds-sutherland.com  
traceyledbetter@eversheds-sutherland.com

David J. Jurkiewicz (18018-53)  
Paul D. Vink (23785-32)  
BOSE McKINNEY & EVANS LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
(317) 684-5000  
(317) 684-5173 fax  
djurkiewicz@boselaw.com  
pvink@boselaw.com

*Attorneys for Defendants Cox Automotive,  
Inc., NextGear Capital, Inc. f/k/a Dealer  
Services Corporation, and John Wick*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic service notification system, this 6th day of October, 2017:

Ryan D. Adams  
James M. Garner  
Matthew M. Coman  
Jacob A. Airey  
SHER GARNER CAHILL RICHTER  
KLEIN & HILBERT, L.L.C.  
radams@shergarner.com  
jgarner@shergarner.com  
mcoman@shergarner.com  
jairey@shergarner.com

Cassie E. Felder  
THE CASSIE FELDER LAW FIRM  
cassie@cassiefelderlaw.com

Kathleen A. DeLaney  
DELANEY & DELANEY LLC  
Kathleen@delaneylaw.net

Catherine E. Lasky  
Kerry A. Murphy  
LASKY MURPHY LLC  
klasky@laskymurphy.com  
kmurphy@laskymurphy.com

Gladstone N. Jones, III  
Lynn E. Swanson  
JONES, SWANSON, HUDDELL &  
GARRISON, LLC  
gjones@jonesswanson.com  
lswanson@jonesswanson.com

Lisa Brener  
BRENER LAW FIRM, LLC  
lbrener@brenerlawfirm.com

s/ Tracey K. Ledbetter  
Tracey K. Ledbetter